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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

M.H.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G051657

(Super. Ct. No. DP025046)

O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Craig Arthur, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Lawrence A. Aufill, under appointment by the Court of Appeal, for
Petitioner.

No appearance for Respondent.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su,
Deputy County Counsel, for Real Party in Interest.

Linda O'Neil, under appointment by the Court of Appeal, for the Minor.

* * *

Petitioner, M.H., the mother of now three-year-old S.C. (child), challenges orders made at the six-month review hearing terminating reunification services and setting a permanency hearing under Welfare and Institutions Code section 366.26. (All further statutory references are to this code.) She claims the court abused its discretion in denying her request for a continuance of the hearing. She also argues the court erred when it terminated her reunification services on the grounds she had not sufficiently participated in those services or made progress in her plan. We deny the petition.

FACTS AND PROCEDURAL HISTORY

In June 2014 the two-year-old child was taken into custody after he suffered injuries, i.e., scratches, bruising, swelling the size of a tennis ball, and a visible handprint on his face. This occurred the day mother decided to move back in with child's father.¹ According to mother, father had hit the child. She did not call the police and later denied she had had contact with father. Mother said that in the past father had threatened to throw child out the window and kill the maternal grandparents (grandparents) and aunt, and had abused mother. Child was placed with grandparents.

Real party in interest Orange County County Social Services Agency (SSA) filed a petition alleging jurisdiction under section 300, subdivisions (a) and (b), that father struck and mother failed to protect child. When mother spoke to police she denied father had struck child and refused to cooperate with them. The petition also alleged there was a history of domestic violence between parents. In addition, mother had an

¹ Father died within a couple of weeks after the detention.

unresolved drug abuse problem and a history of arrests or convictions or both for driving under the influence. She also had mental health problems, being diagnosed with “Major Depression with psychotic features” resulting in two hospitalizations right around the time child was taken into custody and another two months later. There were additional allegations of anger management problems and substance abuse by father.

Mother did not appear at the original detention hearing on June 4.

Although she was present in the hallway before the hearing commenced, when her lawyer returned after stepping away for a few minutes, mother was gone. The court continued the hearing to June 9. Subsequently it was learned that mother had checked herself into a psychiatric hospital and was discharged on June 6. Mother did not attend the continued hearing either.

It was learned later that on June 8 mother had been admitted to a psychiatric hospital. There she was diagnosed with “[m]ajor depression with psychotic features,” “[h]istrionic and borderline traits,” and severe stressors. She was discharged 10 days later for failure to take medication. Several days later, police found mother unconscious on a bench and she was again hospitalized at a psychiatric facility.

At the detention hearing on June 9, the court ordered drug testing and monitored visitation for mother. Grandparents appeared and explained they had been intermittently caring for child since his birth. Shortly thereafter the court granted de facto parent status to grandparents.

When mother finally appeared at the July 8 pretrial hearing, the court ordered her to return for the disposition/jurisdiction hearing. Mother did not attend that scheduled trial date. She had checked herself into a mental hospital. She sought a two-week continuance until she was released, which the court granted. She explained appearing at court caused her too much tension and she feared it would destabilize her. She asked that grandmother be appointed guardian. There was another continuance pursuant to stipulation of all the parties.

During this period mother told both grandmother and SSA that she would not be visiting child in the future because she was moving to Mexico. Mother called and said goodbye to child and stopped communicating with him. She said she wanted grandmother to be assigned as child's guardian. At this time mother was admitted to a hospital and then moved to transitional housing.

Mother did not appear at the continued disposition/jurisdiction hearing, but requested another continuance, which the court again granted. During this period mother was missing drug tests and was not communicating with SSA as to her whereabouts.

On that next scheduled date in September, the hearing proceeded with mother present. The court sustained the petition and ordered reunification services. They included the requirement mother participate in mental health services, take prescribed medications, comply with medical treatment, complete a parenting class, and sign required releases of information requested by SSA. Mother asked SSA to evaluate grandparents by the six-month review date in January. The court ordered mother to return for that hearing.

In its reports SSA recommended mother's services be terminated and a permanency hearing be scheduled. Progress with her plan had been "minimal."
(Capitalization omitted.)

Although some of mother's visits had gone well, others had not. According to grandmother, on one occasion mother drank alcohol and then slept the rest of the eight-hour visit. It was common for mother to sleep four hours during her visits, due, grandmother believed, to her medication. Mother cancelled the next visit because grandmother had asked to end it 15 minutes early. Mother announced she did not want to see child at all if the visit was cut short. When the social worker then moved visits from grandmother's home, mother was angry again and did not want to visit child. At the next visit, when an unauthorized friend accompanied mother, mother yelled and cursed at grandmother in child's presence.

Mother told SSA she had been enrolled in a residential treatment program for four months and would not complete it for another seven months. Mother had not signed releases to have her mental health information disclosed to SSA. She also would not reveal the address of the facility. In early January mother refused to participate in a team meeting to discuss reunification.

Mother did not authorize verification of her enrollment in services until late January. At that time, SSA learned the facility where mother lived had a variety of programs, and mother had completed one in anger management. She had completed two of 10 parenting classes.

Mother was taking her prescribed medication for her major depression and anxiety. She had been participating in therapy for two to three weeks, dealing with anxiety and the absence of child, but had asked for a new therapist. Her goals included improving her self-esteem, becoming employed, finding housing, and reuniting with child. She was doing the work, making progress and expected to complete her plan in July.

In March mother's case manager reported mother planned to begin attending a domestic violence group but had no information as to whether she actually had done so. Shortly thereafter mother advised she had not because she did not like how it was organized. SSA learned the program was only a support group.

Visitation during this period generally went well. Mother reported she and grandmother had decided a guardianship for child was best. Grandparents thought adoption would be ideal because mother was inconsistent about agreeing to a guardianship. Grandparents were providing child with a loving and stable home and he was thriving in their care.

On the morning of the continued six-month review hearing, counsel for all parties appeared. Mother's lawyer advised the court she was not present and moved the court to continue the hearing. He stated that mother had called him the previous evening

and left a message, inquiring as to when the hearing was scheduled. He returned her call at about 8:15 in the morning of the hearing, instructing that she come as soon as possible. The court noted mother had been ordered to be present at 8:30. Counsel explained he had called her a second time, again, leaving a message. Finally, he checked his voicemail about 12:30 p.m.

Mother had informed him she had gone to the emergency room that morning with either a spider bite or a scratch that had become infected on her face. She was diagnosed with cellulitis and given antibiotics. Her lawyer instructed mother to fax him the documents from the emergency room. In response to his question as to when she could be at the court, mother explained she could attend the next day or the day after that.

When the court questioned him, mother's lawyer explained she could not be there that afternoon because she had to take public transportation and the trip would take two to three hours. Counsel stated he thought it was "unrealistic" to expect her to be present that day.

Counsel for SSA, child, and grandparents all objected to the motion to continue. The documents from the hospital showed mother arrived at the emergency room at 10:29 and was discharged at 10:43 a.m. The documents did not show mother had any serious health problem preventing her from attending. And nothing interfered with her ability to come to court after leaving the hospital. She was able to get to a FedEx office to fax the documents so she should have been able to make it to the courthouse.

In addition, pursuant to mother's request, the hearing had already been continued two times so she could submit further information. The reports reflected that mother had provided that information. Counsel further argued it appeared mother intentionally failed to appear.

The court denied the motion, finding there was no good cause to continue. It agreed there was no evidence mother's condition was debilitating. It also agreed there

was no evidence she could not have made it to the hearing by the afternoon. Thus, it concluded mother “voluntarily absented herself from the proceedings.”

The court then conducted the hearing, admitting SSA’s reports. Mother’s lawyer argued mother had “substantially compl[ied]” with her plan, availed herself of the services, attended the required classes, taken the required medication, and “hit all the milestones.” Child and grandparents agreed with SSA’s recommendations. They noted mother had not begun participating in services until the last month or two; visitation had been reduced due to mother’s behavior when she was with the child; mother failed to sign releases so SSA could gather necessary information and reports from service providers until very recently and even those were limited; and mother was ambivalent about wanting the child returned to her because she did not believe she could care for him.

The court found mother had made only minimal progress in mitigating the conditions causing the original detention. She had not regularly participated in services or made substantial progress in her plan. Although she had availed herself of some services, she had “wasted” “a lot of time.” She would not complete her program at the facility where she lived for four more months, and children could not live there. Further, she had not completed her parenting or victims of domestic violence programs or her counseling. Moreover, her mental health had just begun to stabilize. Based on all of those facts, which the court found by clear and convincing evidence, the court could not find a substantial probability the child could be returned to mother within six months.

The court terminated services and scheduled a permanency hearing.

DISCUSSION

1. Request for Continuance

Mother contends the court abused its discretion when it denied her request to continue the six-month review hearing. We disagree.

On a showing of good cause, the court has discretion to continue a hearing as long as it is not detrimental to the child’s best interest, taking into consideration an

expeditious resolution of the child's custody to avoid unnecessarily lengthy temporary placements. (§ 352, subd. (a).) A party's convenience alone is not sufficient good cause. (*Ibid.*) A written motion with supporting declarations is required unless the court finds good cause for an oral motion. (*Ibid.*)

Mother argues no statutory time restrictions barred the continuance. But that was not the basis of the court's ruling. As mother acknowledges, the court denied the motion because it found she had "voluntarily absented herself" from the hearing. The record supports that finding.

Mother had failed to appear at several of the hearings, sometimes explaining it was too stressful for her. As to this hearing, the court was not persuaded mother had a serious health problem requiring her to visit the emergency room or that would have prevented her from attending. Contrary to mother's argument, there is no evidence her medical condition was "urgent." Even assuming the hospital visit was necessary, however, mother was discharged before 10:45 a.m. and could have reached the court by the afternoon.

Mother disputes the court's time calculations, claiming it was not realistic to believe her visit at the hospital was less than 15 minutes. But the calculation was based on records mother had received at the hospital and then provided to the court.

That the court had previously continued the hearing on its own motion is irrelevant. Mother claims the hearing could have proceeded on that earlier date, apparently implying she would have been present that day. But aside from the speculative nature of that contention, nothing supports her conclusion she "want[ed] to participate in the dependency proceedings." Rather, her history of nonattendance belies this claim. And there is no guarantee she would have appeared the next day at the continued hearing.

Moreover, there is no evidence of an alleged "miscarriage of justice." SSA's reports all went into evidence and mother's attorney had the opportunity to

conduct cross-examination. Mother maintains she was denied the right to testify about her progress in her service plan, but provides no facts as to what her testimony would have been or how it might have changed the outcome of the hearing. She had supplied information to SSA and at the hearing, her lawyer stated it had been “quite thorough.” In sum, mother has not shown the court abused its discretion in denying her motion for continuance.

2. Termination of Services

Mother argues the court erred in terminating her services at the six-month review hearing because, contrary to its finding, she had made progress in her plan and should have been given another six months of services. We are not persuaded.

When a child taken into custody is under three years old, court-ordered services are generally provided for six months. (§ 361.5, subd. (a)(1)(B).) At the six-month review hearing, if “the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26” (§ 366.21, subd. (e).) But if “the court finds there is a substantial probability that the child . . . may be returned to his or her parent . . . within six months . . . , the court shall continue the case to the 12-month permanency hearing.” (*Ibid.*)

The court found, by clear and convincing evidence, that mother neither regularly participated in her services nor made sufficient progress in her plan. The evidence supports this finding. Just a few days before the hearing mother still had not found a therapist acceptable to her, had not begun her domestic violence group because it was not organized, had completed only 20 percent of her parenting classes, and would not finish her transitional program for four more months. Finally, mother was unsure whether she even wanted to reunify with child.

These findings are sufficient evidence to satisfy the requirements of section 366.21, subdivision (e). In ruling that there was no substantial probability child would be

returned to mother within the next six months, the court did not abuse its discretion. (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1116 [no abuse of discretion if ruling within bounds of reason].)

DISPOSITION

The petition is denied.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.